An individual has a right to carry on a lawful business in a lawful way. *Schnaier* v. *Navarre Hotel & Importation Co.*, 182 N. Y. 83, 70 L. R. A. 722, 74 N. E. 561. *Lochner* v. *New York*, 198 U. S. 45, 49 L. Ed. 937, 25 Sup. Ct. 539. A license can only be required for the purpose of protecting the interests of the municipality in one of the ways recognized as within the lawful exercise of the police power. *Wright* v. *Hart*, 182 N. Y. 355, 75 N. E. 404; *Lawton* v. *Steele*, 152 U. S. 133, 38 L. Ed. 385, 14 Sup. Ct. Rep. 499. Licenses have been required for places of amusement. *Wallack* v. *Mayor of New York*, 3 Hun 84. The tendency of such places is to draw crowds needing police supervision. *Mayor of N. Y.* v. *Eden Musee American Co.*, 102 N. Y. 593, 8 N. E. 40. This reason does not apply to this case; there being no necessity for police supervision over a school for dancing. Four judges concur in the above and four dissent.

COPYRIGHTS—INFRINGEMENT—MUSICAL COMPOSITION.—A rather amusing case arose recently in New York in which the circuit court of that state decided that a song which was being published by the defendant, entitled, "I Think I Hear a Woodpecker Knocking at my Family Tree" was too much like a song previously concocted by the complainant, called "The Arab Love Song," which was copyrighted. It was therefore ordered that an injunction issue *pendente lite* forbidding the defendant from publishing the chorus of his song. *Hein et al.* v. *Harris* (1910), — C. C., S. D. N. Y. —, 175 Fed. 875.

The defendant denied the infringement and furthermore asserted that the complainant in the melody of his chorus had imitated other songs of similar type, especially "Bon Bon Buddy," "The Glow Worm," "By the Sycamore Tree" and the "Mobile Prance." The court takes up the two "rag times" bar for bar, finding thirteen out of the seventeen bars of the chorus substantially the same in each song. The question of infringement, says the opinion, does not depend upon the musical merit of the piece, nor the fact that it was borrowed in general from the style of predecessors unless it is substantially copied from some other so that to the ear of the average person the two melodies appear to be the same. It would seem from the following quotation from the opinion that music of this nature was not in the high favor of the court. "The defendant urges with much truth that both his own and the complainant's songs are in the lowest grades of the musical art. The vogue, which for a number of years this style of composition has obtained, which is popularly known as "ragtime," has resulted in numberless songs, all of the same general character. It has been a fact that they each bear strong resemblance to every other, and to any expert ear they have a monotonous similarity, which only adds to the general degradation of the style of music which they represent." A case decided in 1845 held that a song might be practically the same as one already copyrighted, yet there would be no infringement if it was the effort of the composer's own mind and was not actually taken from the piece for which the copyright was obtained. *Reed* v. *Carusi*, Fed. Cas. 11, 642 (Taney 72). The court in the principal case seems to lay down a different rule as shown

by the statement that "whether or not the defendant, as he alleges, had never heard the complainant's song, when he wrote his chorus, the chorus certainly is an infringement, and the complainant under his copyright is entitled to protection." Perhaps the latter rule is justifiable since the invention and introduction of the so called "ragtime music," which has called forth a flood of composition greater than any other style of melody yet known to the musical world. It might also tend to uplift this grade of music by discouraging needless repetition and "monotonous similarity," as was aptly said in the principal case.

DAMAGES.—BREACH OF CONTRACT.—The plaintiff entered the defendant's bathing establishment, purchased a proper ticket entitling her to the use of a bathing suit, a bath house and the privilege of bathing in the surf on the beach in front of defendant's premises, and, while waiting in line for her suit and key, was wrongfully and roughly removed from the line by one of defendant's servants. She brought an action for damages on the contract evidenced by her ticket and assigned, as elements to be considered in awarding her compensation for the breach, her rough treatment, injured feelings and humiliation. *Held,* on principles analogous to those governing the obligations of carriers and inn keepers, that the indignity and disgrace suffered by the plaintiff were properly considered as elements of damage. *Aaron* v. *Ward* (1910), 121 N. Y. Supp. 673.

In the absence of special circumstances the damages for breach of contract are such as may "reasonably be supposed to have been in the contemplation of the parties at the time they made the contract as the probable result of the breach of it." *Hadley* v. *Baxendale,* 9 Exch. Rep. 341; *Ill. Cent. R. Co.* v. *Cobb,* 64 Ill. 128; *Hutchins* v. *Ladd,* 16 Mich. 493; *Devlin* v. *New York,* 63 N. Y. 8; *Levinski* v. *Middlesex Banking Co.,* 92 Fed. 449. The question is not what the plaintiff was forced to pay because of the breach but the value of that for which he paid but did not receive. *Chamberlain* v. *Baltimore etc. R. Co.,* 66 Md. 518; *Dodd* v. *Jones,* 137 Mass. 322; *Turner* v. *McDonald,* 4 Ohio Cir. Ct. R. 397. As a general rule mental anguish and distress disconnected with physical injury cannot be made the basis of a recovery in actions *ex contractu. Connell* v. *Western Union Telegraph Co.,* 116 Mo. 34, 38 Am. St. Rep. 575, 20 L. R. A. 172; *Wilcox* v. *Richmond Etc. R. Co.,* 52 Fed. 264, 17 L. R. A. 804. But compensatory damages for indignity and disgrace suffered at the hands of a railroad employee have been allowed, *Gillespie* v. *Brooklyn Heights R. Co.,* 178 N. Y. 347, 66 L. R. A. 618, 102 Am. St. Rep. 503. The same is held in the case of inn keepers. *DeWolf* v. *Ford,* 193 N. Y. 397, 21 L. R. A. (N. S.) 860, 127 Am. St. Rep. 968. And in some other exceptional cases where the alleged breach practically amounts to a wilful tort such damages have been allowed as "flowing naturally" from the breach under the rule announced in *Hadley* v. *Baxendale,* supra. *Wells etc. Express Co.* v. *Fuller,* 4 Tex. Civ. App. 213; *Larson* v. *Chase,* 47 Minn. 307, 14 L. R. A. 85, 28 Am. St. Rep. 370; *Smith* v. *Leo,* 92 Hun 242, 36 N. Y. Supp. 949; *Joseph* v. *Bidwell,* 28 La. Ann. 382, 26 Am. Rep. 102; *Horney* v. *Nixon,* 213 Pa. St. 20, 1 L. R. A. (N. S.) 1184.